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II

110TH CONGRESS
1ST SESSION

S. 1589

To amend title XIX of the Social Security Act to reduce the costs of prescription drugs for enrollees of Medicaid managed care organizations by extending the discounts offered under fee-for-service Medicaid to such organizations.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2007

Mr. BINGAMAN (for himself, Mr. KERRY, Mr. AKAKA, Mr. SALAZAR, Mr. WHITEHOUSE, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XIX of the Social Security Act to reduce the costs of prescription drugs for enrollees of Medicaid managed care organizations by extending the discounts offered under fee-for-service Medicaid to such organizations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Drug Rebate Equali-
5 zation Act of 2007”.

1 **SEC. 2. EXTENSION OF PRESCRIPTION DRUG DISCOUNTS**
 2 **TO ENROLLEES OF MEDICAID MANAGED**
 3 **CARE ORGANIZATIONS.**

4 (a) IN GENERAL.—Section 1903(m)(2)(A) (42
 5 U.S.C. 1396b(m)(2)(A)) is amended—

6 (1) in clause (xi), by striking “and” at the end;

7 (2) in clause (xii), by striking the period at the
 8 end and inserting “; and”; and

9 (3) by adding at the end the following:

10 “(xiii) such contract provides that (I)
 11 payment for covered outpatient drugs dis-
 12 pensed to individuals eligible for medical
 13 assistance who are enrolled with the entity
 14 shall be subject to the same rebate re-
 15 quired by the agreement entered into
 16 under section 1927 as the State is subject
 17 to and that the State shall allow the entity
 18 to collect such rebates from manufacturers,
 19 and (II) capitation rates paid to the entity
 20 shall be based on actual cost experience re-
 21 lated to rebates and subject to the Federal
 22 regulations requiring actuarially sound
 23 rates.”.

24 (b) CONFORMING AMENDMENTS.—Section 1927 (42
 25 U.S.C. 1396r-8) is amended—

26 (1) in subsection (d)—

(A) in paragraph (1), by adding at the end the following:

“(C) Notwithstanding the subparagraphs (A) and (B)—

“(i) a medicaid managed care organization with a contract under section 1903(m) may exclude or otherwise restrict coverage of a covered outpatient drug on the basis of policies or practices of the organization, such as those affecting utilization management, formulary adherence, and cost sharing or dispute resolution, in lieu of any State policies or practices relating to the exclusion or restriction of coverage of such drugs; and

“(ii) nothing in this section or paragraph (2)(A)(xiii) of section 1903(m) shall be construed as requiring a medicaid managed care organization with a contract under such section to maintain the same such policies and practices as those established by the State for purposes of individuals who receive medical assistance for covered outpatient drugs on a fee-for service basis.”; and

1 (B) in paragraph (4), by inserting after
2 subparagraph (E) the following:

3 “(F) Notwithstanding the preceding sub-
4 paragraphs of this paragraph, any formulary
5 established by medicaid managed care organiza-
6 tion with a contract under section 1903(m) may
7 be based on positive inclusion of drugs selected
8 by a formulary committee consisting of physi-
9 cians, pharmacists, and other individuals with
10 appropriate clinical experience as long as drugs
11 excluded from the formulary are available
12 through prior authorization, as described in
13 paragraph (5).”; and

14 (2) in subsection (j), by striking paragraph (1)
15 and inserting the following:

16 “(1) Covered outpatients drugs are not subject
17 to the requirements of this section if such drugs
18 are—

19 “(A) dispensed by a health maintenance
20 organization other than a medicaid managed
21 care organization with a contract under section
22 1903(m); and

23 “(B) subject to discounts under section
24 340B of the Public Health Service Act.”.

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